

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2135

February 28, 1974

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2135

February 28, 1974

1. COURT DECISIONS - LO PRESTI and ALLAMUCHY LIQUORS, INC. - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-2215-72

In the Matter of Disciplinary  
Proceedings against

LEWIS LO PRESTI  
Box 149 Mt. Herman Road  
Hope Township, N. J.

Holder of Unlimited Solicitor's  
Permit No. 3257 for the 1969-70  
License Period and No. 1247 for the  
1972-73 License Period Issued by the  
Director of the Division of Alcoholic  
Beverage Control

AND

ALLAMUCHY LIQUORS, INC.  
t/a Allamuchy Liquors  
Main Road, Allamuchy Township  
P.O. Hackettstown, N. J.

Holder of Plenary Retail Distribution  
License D-1, issued by the Township  
Committee of the Township of Allamuchy.

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Submitted: November 5, 1973 - Decided December 26, 1973

Before Judges Handler, Meanor and Kole.

On appeal from Conclusions and Order of the Director of the  
Division of Alcoholic Beverage Control.

Mr. Malcolm H. Greenberg, Attorney for appellants.

Mr. George F. Kugler, Jr., Attorney General of New Jersey,  
attorney for respondent (Mr. Carl A. Wyhopen, Deputy  
Attorney General, of counsel and on the brief).

PER CURIAM

(Appeal from the Director's decision in Re LoPresti and  
Allamuchy Liquors, Inc., Bulletin 2100, Item 6. Director  
affirmed. Opinion not approved for publication by Court  
Committee on Opinions).

2. COURT DECISIONS - GALATRO v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL -  
DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-1061-72

PETER GALATRO AND KATHLEEN GALATRO,  
t/a MARINE BAR,

Petitioner-Appellants,

v.

ROBERT E. BOWER, Director,  
Division of Alcoholic Beverage Control,  
Department of Law and Public Safety,  
State of New Jersey,

Respondent-Appellee.

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Submitted December 4, 1973 - Decided December 20, 1973.

Before Judges Kolovsky, Fritz and Crane.

On appeal from Decision of Director of Division of Alcoholic  
Beverage Control.

Mr. Charles Frankel, attorney for appellants  
(Mr. Peter B. Shaw, on the brief).

Mr. George F. Kugler, Jr., Attorney General, attorney for  
respondent (Mr. David S. Piltzer, Deputy Attorney General,  
of counsel and on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Galatro v. Division  
of Alcoholic Beverage Control, Bulletin 2085, Item 3. Director  
affirmed. Opinion not approved for publication by the Court  
Committee on Opinions).

3. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER.

In the Matter of Disciplinary )  
Proceedings against )

Peter Galatro & Kathleen Galatro )  
t/a Marine Bar )  
14-16-18 Wharf Avenue )  
Red Bank, N.J. )

SUPPLEMENTAL  
ORDER

Holder of Plenary Retail Consumption )  
License C-15, issued by the Borough )  
Council of the Borough of Red Bank. )

-----  
Charles Frankel, Esq., Attorney for Licensee  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

On December 13, 1972, Conclusions and Order were entered herein suspending the subject license for ninety days, commencing Tuesday, January 2, 1973 after licensee was adjudged guilty of charges that it allowed, permitted and suffered the possession of slips, tickets, memoranda and other writings pertaining to bookmaking, pool selling and lotteries, known as the "numbers game" and "football pools", in violation of Rules 6 and 7 of State Regulation No. 20. Re Peter Galatro & Kathleen Galatro, Bulletin 2085, Item 3.

On appeal filed, an order was entered by the Appellate Division of the Superior Court staying the said suspension pending the determination of said appeal. On December 20, 1973, the said Court affirmed the action of the Director and remanded the matter to this Division for reimposition of the penalty. Re Peter Galatro & Kathleen Galatro v. Robert E. Bower, Director (App. Div. 1972) not officially reported, recorded in Bulletin 2134, Item 2. The ~~suspension~~ suspension may now be reimposed.

The attorney for the Appellant has requested that I now reconsider and modify the penalty heretofore imposed. A similar request was made on the appeal before the Appellate Division of the Superior Court. The said Court found that the charges had been proven and fully supported by substantial evidence present in the record, and there was "no abuse of discretion in the determination of the Director with respect to the penalty to be imposed." I find no present basis to warrant any modification of the said penalty; the request, therefore, is denied.

Accordingly, it is, on this 24th day of January, 1974

ORDERED that Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Red Bank to Peter Galatro & Kathleen Galatro, t/a Marine Bar, for premises 14-16-18 Wharf Avenue, Red Bank be and the same is hereby suspended for ninety (90) days, commencing 2:00 a.m. on Thursday, February 7, 1974 and terminating at 2:00 a.m. on Wednesday, May 8, 1974.

ROBERT E. BOWER  
DIRECTOR

4. APPELLATE DECISIONS - GREENSTEIN v. ELIZABETH.

Sydney Greenstein, t/a Star )  
 Lounge & Liquors, )  
 )  
 Appellant, )  
 v. )  
 City Council of the City of )  
 Elizabeth, )  
 Respondent. )

On Appeal

CONCLUSIONS and ORDER

-----  
 Jacob M. Goldberg, Esq., Attorney for Appellant  
 Frank P. Trocino, Esq., By Daniel J. O'Hara, Esq., Attorney for  
 Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent (Board) which on June 14, 1973 denied the application of appellant for renewal of his plenary retail consumption license for 1973-74 for premises 931 East Grand Street, Elizabeth.

The resolution adopted by the Board in its pertinent part reads as follows:

"WHEREAS, the Board, after proper investigation, and having conducted a hearing in the matter at which the licensee was present, together with his attorney, John D. Mollozzi, Esq., 1143 East Jersey Street, Elizabeth, New Jersey; and

"WHEREAS, it is the opinion of the Board that the conduct of the licensed premises was in violation of the Rules and Regulations pertinent and relating to the conduct of a licensed premises; and

"WHEREAS, in the judgment of the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth it would be contrary to the best interest of the public health, safety, welfare and morals to approve the application for renewal of said licensed premises; now, therefore, be it

"RESOLVED, that the application of Sydney Greenstein t/a Star Lounge & Liquors, for renewal of Plenary Retail Consumption License No. C-139, for premises #931 East Grand Street, Elizabeth, New Jersey, for the license period beginning July 1, 1973 and terminating June 30, 1974, be and the same is hereby denied."

In his petition of appeal appellant urges that the action of the Board was erroneous for the following reasons:

"A. Its determination was arbitrary, capricious and an unreasonable exercise of its discretion and was not based on any competent proof submitted to the Respondent.

"B. Its determination was not based on any proof that the licensed premises had been conducted improperly and in violation of the Rules and Regulations of the Board and of the Division of Alcoholic Beverage Control of the State of New Jersey as set forth in the report annexed to its decision and made part of and labelled Exhibit A. Respondent failed to annex the report to its decision when mailed to the Appellant.

"C. Its penalty of a total revocation (sic) was excessive under the circumstances and constituted an abuse of its discretion.

"D. It failed to serve a 5 day notice of any alleged charges against the Appellant and failed to afford him a reasonable opportunity to be heard on alleged charges preferred against him, which constituted a violation of the procedural process of due law denied him pursuant to N.J.S.A. 33:1-31 and by the Federal and State Constitutions."

The Board in its answer denied the substantive allegations contained in the petition of appeal.

Upon filing of the appeal an order dated June 26, 1973, was entered by the Director extending the term of the appellant's 1972-73 license pending determination of this appeal and until the entry of a further order herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The stenographic transcript of the hearing below was submitted in accordance with Rule 8 of State Regulation No. 15, supplemented by testimony of other witnesses.

The resolution denying the renewal of license, to which there were attached records of the local Police Department, was received in evidence.

At the meeting held by the Board to consider appellant's application for renewal of his license on June 14, 1973, Lieutenant Joseph Hennings, a member of the local police force, upon being questioned relative to what the police records show as to police activity at the subject premises, testified as follows:

"A. All right. This is not in the exact order, but on 2/16/71, a shooting. 1/31/70, a fight.

Q. Would you go a little slower, please, Lieutenant?

A. Sure. 2/16/71, a shooting took place in there.

1/31/70, a fight. There was an arrest involved in that. 11/1/71, an assault. 5/27/71, an assault. 8/1/71, an assault. 9/12/71, an assault. 9/16/71, a gambling arrest on the premises. We have here 8/21/72 to 10/20/72, premises closed as a result of gambling. 3/6/72, an assault. 6/19/72, an assault. 1/31/72 -- this was a closing listed here for 60 days which had already been mentioned, 5/3/73, the owner was assaulted. 4/13/73, a narcotics arrest. 3/14/73, a homicide."

Additionally, Hennings testified:

"The background on this tavern, I consider rather outstanding. There has been many complaints to the Police Department. Many jobs that the Police Department has handled in there. On previous occasions, I have sent a letter to the Board requesting that they call the owner in to discuss the police problems in the area and to give him a chance to give his version of it and, if possible, to try to work out some solution to correct the condition in the neighborhood that was getting worse. And, if the Board wasn't satisfied, I had previously recommended that this license not be renewed. To the best of my knowledge, the owner of the premises has been before the Board previously. When I look at the police reports here, I see more deterioration and, of course, as a lieutenant in the Confidential Squad, one of the specific areas of responsibility is the upholding of the ABC laws in town. I feel very strongly about the police problem in this place...."

On cross examination the officer asserted that, in so far as the gambling charge was concerned, the suspension of license was based upon gambling activity being conducted by a bartender in appellant's premises and not by appellant personally. (See Greenstein v. Elizabeth, Bulletin 2065, Item 2.)

Concerning the homicide of March 14, 1973, the officer conceded that, although appellant was on the premises at the time, he was not directly involved therein. Appellant reported the incident to the police. Hennings did not personally investigate any of the calls or incidents mentioned in the police records, nor did he have first-hand knowledge thereof.

Finally, the witness explained that the tavern is located in a neighborhood that has deteriorated over the years and wherein there is a high propensity towards acts of violence.

The sole witness produced on behalf of the Board at the de novo hearing was Thomas J. Garvey, its Secretary. He testified that, in response to appellant's inquiry concerning the reason for his being called to attend a meeting of the Board on June 14, 1973, he informed appellant that "each year the Board

takes into consideration licensees who have had excessive police calls, disturbances with regard to trouble spots in the City of Elizabeth, and, in the past ten months or so, from the excessive reports in his place, he was listed as one of the so-called trouble spots and that's why he was being called in."

Appellant Sydney Greenstein testified that he first acquired an interest in the licensed premises in 1965 as a partner with another individual. He acquired sole ownership in the year 1971.

Concerning the incident of March 14, 1973, wherein a Morris Spicer was murdered, appellant testified that he was working in the package goods section of the licensed premises when he heard an argument ensue in the adjoining poolroom area. Leaving his customers, he entered the poolroom, saw two males struggling and observed the murdered man's brother attempting to stop the struggle. He attempted to stop the struggle and received a cut on the wrist.

Relative to the incident of April 13, 1973, a female, identified as Lois Strong, entered the barroom. A detective followed her in and had her empty her pockets on the bar. Marijuana was found among her possessions. Greenstein had no prior knowledge of the contents of her pockets.

Concerning the incident of May 3, 1973, he requested a Leonard White (who had been previously barred from the premises) to leave. White refused at first. On his way out White flung a beer bottle, striking Greenstein with it. Greenstein filed a complaint against White.

Referring to an incident which appears in the police records of March 6, 1972, concerning an alleged fight wherein a James Miller was allegedly stabbed in the chest and had his nose broken by a male known only as Billy, Greenstein testified that he was not acquainted with a James Miller (who later could not be located) and knew nothing of the incident.

Concerning an incident wherein a Bertha Carter (an acquaintance of appellant) alleged that she was stabbed by another female in the tavern on May 27, 1971, Greenstein asserted that he was aware that there was an argument in the tavern; however, he didn't know that she had been cut. He asserts that he did not witness the stabbing.

Appellant was next questioned concerning his knowledge of an incident alleged to have occurred on August 1, 1971, wherein a Miss Linda Queen asserted that she was assaulted in the licensed premises by a William Burton who ripped her sweater and bra off, causing her to flee topless from the tavern. The police report indicated that Burton admitted having an argument with Linda, but denied the assault. Appellant responded that he was not present

at the time of its occurrence and his knowledge thereof is derived through hearsay.

Relative to an entry recorded on September 12, 1971, wherein a Charles Jenkins reported that someone "dropped" a chair on him, causing injury to his nose and left eye, appellant testified that he did not recall that incident.

An entry for November 1, 1971, set forth that a Bertha Nelson claimed that she sustained a laceration of the small finger on her right hand when a male struck her with a bottle at the tavern. Appellant asserted that he was not acquainted with a Bertha Nelson and had no recollection of the incident.

Appellant had no knowledge of incidents recorded in the police records for January 10, January 31, September 5, and November 20, 1970, involving assaults alleged to have occurred in the licensed premises.

Appellant asserted that he worked in the licensed premises fourteen to sixteen hours daily, seven days a week; that he usually worked in the packaged liquor store; that he frequently went into the tavern area in order to supervise its operation; that he tried to bar undesirables, but that this was difficult because they would "wander in just as soon as you turn your back." He described the neighborhood as containing "good people" and "bad people."

A petition containing one hundred three signatures of area residents, prepared and finalized by appellant subsequent to the hearing held by the Board to consider the renewal of the license and attesting that appellant conducts his business in a peaceful manner, free of undesirables, and that it is not a trouble spot, was admitted into evidence over respondent's objection.

Walter P. Spicer, a brother of Morris Spicer, who was killed in appellant's premises on March 14, 1973, and who was employed as a part-time bartender by appellant, testified that he was in the package goods area on that day; that, as soon as he heard a commotion, he went into the poolroom area and tried to break up the struggle. Greenstein also tried to break up the struggle. Both he and Greenstein suffered cuts as a result of their efforts.

Concerning the manner in which Greenstein conducts the tavern, the witness testified:

"Well, he, he tried to keep all the trouble down in there. It's kind of difficult. You can't always stop it all. But he does. He puts the people out if he can before they start a fight. We also call the police pretty regularly if he can't control it."

Appellant contended that the Board's action was erroneous in that it was based upon certain occurrences which appeared in the police records over which he had no prior knowledge and control; that the items which appeared in the police records lacked corroboration; that there was no testimony that the area residents complained concerning the operation of the establishment; and that the testimony of Lieutenant Hennings, the police official who testified at the hearing before the Board, was based upon hearsay in that the police officer had not investigated any of the incidents recorded in the police records.

Respondent contended that the fact that appellant was not personally identified with the particular incidents entered in the police records is immaterial and that Lieutenant Hennings, in his capacity as head of the Confidential Squad, may properly voice his opinion and recommendation relative to the renewal of appellant's license.

The central issue herein is whether the record and the evidence substantiated and justified the Board's action in refusing to renew appellant's license. The burden of proof in all these cases which involve discretionary matters, where the renewal of a license is sought, falls upon the appellant to show manifest error or abuse of discretion by the issuing authority. Nordco, Inc. v. State, 43 N.J. Super. 277, 287 (App.Div. 1957). As the court stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 ((Sup. Ct. 1946):

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed 75 Id. 557. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the license operation, not the fault or merit of the licensee. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Paterson, 33 N.J. 428, 446 (1960). A renewal license is in the same category as an original license. Zicherman v. Driscoll, supra.

Thus in this matter, entirely apart from the appellant's alleged culpability with respect to the deleterious conditions which surrounded this establishment, the broad question posed before the Board on the subject application for renewal was whether in the light of all the surrounding circumstances and conditions it was good for Elizabeth and the neighborhood involved for this tavern to continue to exist. The objective judgment of the Board was that its continuance would be inimical to the public interest.

The Director should affirm the determination of the Board unless he finds that "the act of the Board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

Appellant alleges error in that the Board failed to serve him with a five-day notice of any alleged charges against him. However, it is understandable that local issuing authorities at times withhold the institution of disciplinary charges with the expectation that, where warranted, licensees will make efforts to improve the conditions in the operation of the licensed business. This would appear to be the natural thing for a liquor licensee to do in order to protect his investment. Unfortunately, some licensees do not take the hint and consider that the failure of the issuing authority to take specific action as license for continued profligacy. As the court stated in Downie v. Somerdale, 44 N.J. Super. 84, 87 (App.Div. 1957):

"... Mr. Downie's contention seems to be that the borough council should have furnished him with some statement of its reasons to which he might take exception before the council came to its decision. But the law does not impose on the council an obligation of this sort. Mr. Downie perhaps thinks that on a hearing before the borough he was entitled to sit back and wait for it to put in its case. On the contrary, upon such a hearing the burden of proof falls on the applicant for the renewal of the license. Nordco, supra."

It is significant that numerous police calls were made according to testimony of witnesses. The court in Nordco, Inc. v. State, supra (43 N.J. Super. at p. 283) agreed with the

Director's finding therein that "the frequency of calls upon the police demonstrated of itself that the tavern had become a 'trouble spot.'"

Furthermore, there is no provision in the Alcoholic Beverage Law or the rules and regulations of this Division which requires a local issuing authority to conduct a hearing under the circumstances appearing in the instant matter. In disciplinary proceedings, of course, charges must be prepared and served upon the licensee and the licensee must be given an opportunity to be heard. Therefore, the action taken by the respondent constituted no error since no such hearing was required. Lipman v. Newark, Bulletin 356, Item 6, and cases cited therein. See also Charlie's Capri, Inc. v. East Newark, Bulletin 1901, Item 1.

Rule 8 of State Regulation No. 2 provides:

"No hearing need be held if no such objections shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

Of course, I have noted in arriving at a determination that some of the police calls did not relate to or impugn the conduct of the tavern business. In particular, it is my view that the homicide which occurred in the establishment on March 14, 1973, was due to a sudden and unanticipated circumstance over which the licensee had no control. However, I reject appellant's argument concerning the admissibility of the police records. See New Jersey Rules of Evidence, Rule 63(13); Brown v. Mortimer, 100 N.J. Super. 395 (App.Div. 1968).

A licensee must keep his place and his patronage under control and is responsible for conditions both outside and inside his premises. Galasso v. Bloomfield, Bulletin 1387, Item 1.

Finally, I observe that there is no persuasive evidence to indicate any improper motivation on the part of the Board in its action, and there appears to be substantial evidence to support its determination herein. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Indeed, as the court stated in Lyons Farms Tavern, Inc. v. Newark et al., 55 N.J. 292 (1970), reprinted in Bulletin 1905, Item 1:

"... Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue in these cases: Did the decision of the local board represent a reasonable exercise of discretion on the basis of evidence presented? If it did that ends the matter of review both by the Director and by the courts...."

I find from my examination and assessment of the total record herein that the Board's determination was supported by substantial evidence and that it acted circumspectly in the public interest in its discretion to refuse to renew appellant's license for the current license period. Further, I conclude that appellant has not established that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is therefore recommended that in the subject case the Board's action be affirmed and that the appeal herein be dismissed.

#### Conclusions and Order

Exceptions to the Hearer's report with supportive argument were filed by appellant herein pursuant to Rule 14 of State Regulation No. 15, and answering argument thereto was filed by the respondent.

Having carefully considered the entire matter herein, including the transcript of testimony, the exhibits, the Hearer's report, and the exceptions filed with respect thereto which I find to be lacking in merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of December 1973,

ORDERED that the action of the respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the order dated June 26, 1973 extending the term of appellant's 1972-73 plenary retail consumption license pending the determination of the appeal herein be and the same is hereby vacated, effective immediately.

Robert E. Bower  
Director

5. APPELLATE DECISIONS - YANTICAW WINES & LIQUORS, INC. v. NUTLEY.

Yanticaw Wines & Liquors, )  
Inc., t/a Yanticaw Wines & )  
Liquors, )

Appellant, )

v. )

On Appeal

Board of Commissioners of )  
the Town of Nutley, )

CONCLUSIONS  
and  
ORDER

Respondent. )

-----  
Lawrence S. Schwartz, Esq., by Richard W. Vallario, Esq.,  
Attorney for Appellant  
James M. Piro, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Board of Commissioners of the Town of Nutley (Board) which on June 6, 1973 suspended appellant's plenary retail distribution license for ten days, in consequence of a finding of guilt of a charge alleging that on March 16, 1973 it sold and delivered an alcoholic beverage to a minor, in violation of Rule 1 of State Regulation No. 20.

In its petition of appeal appellant alleged that the Board's action was contrary to the weight of evidence. This contention was denied by the Board in its answer.

Upon filing of the appeal the Director, by order dated June 14, 1973, stayed the suspension imposed by the Board pending determination of the appeal and until further order.

By stipulation of counsel, the matter was decided solely upon the transcript of the hearing held by the Board, supplemented by oral summation, pursuant to Rules 6 and 8 of State Regulation No. 15.

The testimony reflected in the said transcript presented the following factual picture: Detective Charles Olivo, of the Nutley Police Department, testified that, while on duty in an unmarked patrol car on the evening of March 16, 1973, he observed a car parked behind the local high school in which there were seated four males, identified as David ---, Keith ---, Drew --- and Mauro ---, each of whom was under the age of eighteen. He found four bottles of Budweiser beer in the car, one of which

was opened and half consumed. The youths were taken to police headquarters for questioning. Only Drew gave a statement that night. He asserted that David purchased the beer at Phil's Yanticaw Liquors while the others waited in the car.

David (17 years of age on the date alleged) entered Yanticaw Liquors (appellant's premises) and purchased four quart-bottles of Budweiser beer. He identified the individual who sold him the beer as Philip Intorelli. Upon leaving the licensed premises with the beer, he entered a motor vehicle in which his aforementioned three companions were waiting. They drove to the high school parking lot where they were shortly thereafter confronted by the police. He was not questioned by appellant's employee relative to his age, nor was he asked to produce any identification.

Drew, Keith and Mauro pooled money; gave it to David; saw David enter Phil's Yanticaw Liquors (described as a liquor, grocery and delicatessen store); saw David return to the car carrying a bag which they later ascertained contained four quart-bottles of Budweiser beer. They drove to the high school parking lot where they were confronted by the police.

On behalf of the corporate appellant, Philip Intorelli, its principal officer, testified that his establishment has been known as "Phil's." He recalled seeing David in his store as a customer; however, he did not on the night of March 16 or at any other time sell him any beer or liquor. He did not recall seeing him in his store on March 16.

All of the witnesses described the subject licensed premises as being located in close proximity to a "thrift shop", an upholstery store, and a florist. Intorelli conceded that there are no other liquor stores on Passaic Street where he was located. He further conceded that, although there has been some pilferage in the store, it would be impossible for someone to pilfer four bottles of liquor. He attends to the business from 8 a.m. to late at night. He did not feel that David had any personal feeling of antagonism towards him.

Appellant urged that the failure of the Board in not informing it of the charge leveled against it until March 29, 1973 (a period of thirteen days after the date of the alleged violation) was highly prejudicial. This argument is summarily rejected.

The burden of establishing that the Board acted erroneously and in an abuse of its discretion is upon appellant. Rule 6 of State Regulation No. 15. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way: Could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented? The Director should not reverse unless he

finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by the Board. Cf. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); Nordco, Inc. v. State, 43 N.J. Super. 277, 282 (App.Div. 1957); Lyons Farms Tavern v. Mun. Bd. of Alc. Bev. Newark, 55 N.J. 292, 303 (1970).

The factual complex is not in substantial dispute. A sale was made to a minor in contravention of N.J.S.A. 33:1-77 and Rule 1 of State Regulation No. 20. No consideration of justice or precedent appears to dictate that the Director should substitute his own judgment and intrude upon the determination made by the Board based on the record herein. I conclude the charge was established by a fair preponderance of the credible evidence. Therefore I find that appellant has failed to sustain the burden of establishing that the Board's action relative to this charge was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be affirmed, the appeal be dismissed, and the suspension heretofore imposed by the Board and stayed by the Director pending determination of this appeal be reimposed.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the argument of counsel in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 26th day of December 1973,

ORDERED that the action of respondent be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated June 14, 1973 staying respondent's action pending the determination of this appeal be and the same is hereby vacated; and it is further

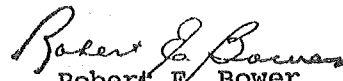
ORDERED that Plenary Retail Distribution License D-1, issued by the Board of Commissioners of the Town of Nutley to Yanticaw Wines & Liquors, t/a Yanticaw Wines & Liquors for premises 358 Passaic Avenue, Nutley, be and the same is hereby suspended for ten (10) days, commencing 2:00 a.m. on Tuesday, January 8, 1974 and terminating 2:00 a.m. on Friday, January 18, 1974.

Robert E. Bower  
Director

6. STATE LICENSES - NEW APPLICATION FILED.

Continental Brands, Inc.  
1740 Highway #34  
Wall, New Jersey

Application filed February 27, 1974  
for wine wholesale license.

  
Robert E. Bower  
Director